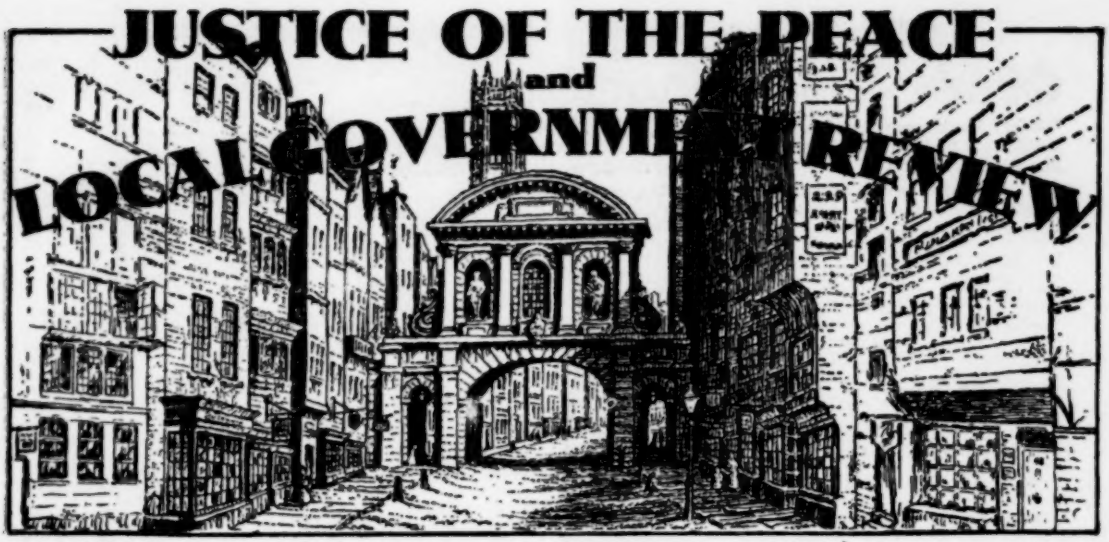

VOL. CXVI LONDON: SATURDAY, OCTOBER 18, 1952 No. 42

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Official & Classified Advertisements, etc.

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NOTIFICATION OF VACANCIES ORDER, 1952

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Bournemouth.

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Applications, on forms to be obtained from the Clerk of the Council, Shire Hall, Warwick, must reach the undersigned not later than Monday, November 10, 1952.

L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall,
Warwick.
October 13, 1952.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

The Chief Magistrate on "Bow Street and the Police"

The *Police College Magazine* is fortunate in obtaining contributions from writers of varied experience and stand-point. The current number includes an article on "Bow Street and the Police," by Sir Laurence Dunne, the Chief Magistrate of the Metropolitan Magistrates' Courts, which contains a great deal of interesting matter that is sure to be new to many if not most readers of the magazine.

Sir Laurence starts with the justifiable claim that what Westminster Hall is to the common lawyer, so is, or should be, Bow Street to the Justice of the Peace and the modern constable. He then shows how the early Justice of the Peace, under the statutes of 1327 and 1360, was at first a peace officer rather than a judicial personage, whose powers over certain bodies of police did not finally disappear until 1839. In passing, the article gives some information that is not very widely known about the origin and nature of felony.

As to the constable, his office is said to have originated in the Statute of Winchester, 1285, establishing "watch and ward" and "hue and cry." The constables acted under the justices. The justices were gradually given increasing judicial powers, and dealt with minor cases in their own houses. Sir Laurence notes the interesting point that in the reign of Elizabeth I they petitioned the Queen either to grant them pay or to relieve them of their burden of work. By the beginning of the eighteenth century the position of justices in the great towns had sunk very low, and before the end of it many were even known as "trading justices." However, Sir Laurence Dunne concedes that it is not certain whether the term trading justice was applied to justices who were tradesmen, or whether it denoted the kind of justice they dispensed ; most writers have given it the worse interpretation. As he says : "They and their clerks made quite a good thing out of it, and were mostly active in promoting quarrels and disputes which they settled to their own pecuniary advantage and not to that of the disputants." There is a graphic description of the London of those days, with its almost innumerable public houses, its many bawdy houses, its filthy lodging houses and its dangerous streets infested with footpads. Housebreakers, then as now, mostly young men, were active.

It was left to the two Fieldings', who may be regarded as in a sense the predecessors of Sir Laurence Dunne in the office of Chief Magistrate, to begin the work of tackling the problem of crime and corruption. They, with the assistance of their friend Saunders Welch, made the beginnings of a trustworthy and efficient body of constables. The tiny organization with which they began was to prove the forerunner of the trained and organized Metropolitan Police Force, soon followed by other forces. Sir John Fielding served as magistrate for twenty-eight years and what he achieved is all the more remarkable seeing that he was quite blind. The Registry he established at Bow Street was the direct precursor of the present day Criminal Record Office.

As Sir Laurence Dunne observes, Fielding combined functions which would now be considered incompatible. The magistracy and the police have become separate and distinct bodies, as is right and proper. Nevertheless, as this fascinating and informative article shows, Fielding, determined and incorruptible, paved the way for the modern system of police of which we are all justly proud.

Re-hearing a Charge

A man who had been fined in his absence in respect of a summary offence appeared ten minutes later and apologized for being late. The chairman of the bench asked him if he would like to have the case tried again in his presence, and the defendant said he would. Thereupon the evidence was duly taken, and in the result the defendant was fined the same amount as had previously been adjudged.

Although the conviction and fine remained as before, the defendant must have felt that he had been fairly treated by being heard, whereas if he had been told the case was finally disposed of and could not be reopened he would probably have felt a sense of grievance. This would have been the more unfortunate as the man was apparently a foreigner.

It is generally conceded that, even though there may be no statutory authority for reopening a case after judgment has been given, it is permissible to take such a course when it is in the interest of the defendant, provided the court is still sitting and the parties are present. Such a course would not be lawful on a subsequent day, the justices being then definitely *functi officio*.

New Probation Rules

Some important amendments to the Probation Rules, 1949-52, are made by the Probation (No. 2) Rules, 1952 (S.I. 1664 (L. 10)), which came into force on September 16. The matters dealt with are the classes of persons released from custody who are to be advised, assisted and befriended by probation officers, the duty of a probation officer to keep in touch with a probationer's family when he is residing away from home, and applications for amendment of a probation order when the probationer goes to reside in a new petty sessional division. The rules also deal with increases of salary for probation officers and allowances for subsistence.

In particular, r. 4 which amends r. 55 (5) of the Probation Rules, 1949, will be welcomed, we believe by many courts and many probation officers. It relieves a probationer officer from the

requirement of applying for amendment of the probation order when a probationer goes to reside in another petty sessional division if the two courts concerned are satisfied that in the special circumstances a change is not desirable. At the same time, it is clear that the discretion in this matter needs to be exercised carefully, for, as a Home Office Circular states: "The impracticability of adequate supervision at a distance, the importance of the supervising officer being near at hand to deal with emergencies, and the inconvenience of bringing a probationer from a distance to appear before the supervising court on breach or in consequence of a further offence, should all be weighed against any special reasons that may exist for avoiding transfer of supervision."

Wireless Reception in Public Houses

We have heard it suggested as a useful amendment to the Licensing Acts that a publican's licence should be widened in scope so as to include a permission to use licensed premises for public music and other similar amenities which in modern days an enterprising licence-holder provides for his customers. The precedent for enlarging the scope of a publican's licence so as to relate it to matters other than the sale of intoxicating liquor is to be found in s. 11 of the Gaming Act, 1845, which provides that no separate licence for public billiards playing is necessary in "full" on-licensed premises.

The suggestion, as it reaches us, is linked with the installation of wireless sets in licensed premises, described as the most harmless of simple amenities without which no modern public house is complete. The argument goes on to suggest that it is anomalous that separate licences shall be sought from the same authority for what are essentially unified activities. The argument looks attractive and would be more so if it contained the germ of an idea for the avoidance of consumption off the premises. Wireless music from high-powered sets has a tendency to escape. One man's music is another man's noise: and the least sensitive of us is apt to be disturbed when The Green Man pours Spike Jones into our left ear while The Red Dragon is projecting Mozart into our right.

It is not, we think, that licensing justices are eager to keep their powers of separate licensing of wireless reception; but they value the power which s. 51 (2) of the Public Health Acts Amendment Act, 1890, gives them of attaching restrictive conditions to their licences. We recently came across a condition imposed as common form on all licences of this kind granted in one licensing district: "That notwithstanding the date mentioned herein as the date on which this licence will cease to be in force, the licensing justices may revoke this licence at any time on proof furnished by any resident in the neighbourhood of the premises or any constable that the licence-holder has not taken such steps as are reasonably necessary to secure that sounds of broadcast reception are not heard outside the premises so as cause nuisance or discomfort to residents in the neighbourhood of the premises."

Television Reception in Licensed Premises

Our reference to the topic really is inspired by a number of Practical Points which lately have appeared in our columns—*see* Vol. 115 at pp. 462, 478, and pp. 143, 657, *ante*. From the questions put to us, it seems that licensing justices in some districts, having licensed the use of "wireless installations" in public houses in days when "wireless installation" connoted an instrument for the reception of sound alone, are disturbed to discover that licence-holders are installing television sets. We are asked (if we may condense all the complex questions into a simple one) "Does 'wireless installation' include a television set?" We find it impossible to avoid the conclusion that species television set is of genus wireless installation and are compelled to say so; but in Practical Point No. 15 on p. 143, *ante*, we suggested a procedure which might be adopted by licensing justices who are less willing to permit television than sound reception in licensed premises in their areas.

But as we think the more about it, we wonder upon what logical or administrative grounds can licensing justices acquiesce in the one and object to the other. The workings of the magisterial mind interest us very much: it is, indeed, our first duty to our readers to attempt to define it. We do not like being puzzled. Will someone please enlighten us?

A Reason for Pleading Guilty

A man who told a policeman at Barmouth that he would plead guilty to a minor offence, said he would get a smaller fine that way and that if he pleaded not guilty they would make it more. He added that he would not waste the time of the poor magistrates. In so saying he was giving expression to a popular belief.

It hardly needs to be said that a defendant is entitled to put forward a defence without being treated more severely for that. What is probably true in many cases is that a man who pleads not guilty, and adds what the court considers to be perjury to his offence, may well antagonize the court to the extent of damaging his character in its eyes. The court feels that here is a man who has shown no reason why the penalties of the law should be mitigated in any way for him. Whether or not this is a correct attitude is a point about which people will continue to argue. What is abundantly clear is that no defendant ought to plead guilty, unless he really means it, simply because he thinks it may pay to do so, and no court should ever accept a plea of guilty if there is any suspicion that that is the reason for the plea.

The Arts in Prison

It may be far better that a man should spend such time as he can while serving a prison sentence in practising the arts than in sewing mailbags, but it seems a pity that anyone should find it necessary to commit crime and be sent to prison in order to find inspiration.

A strange story was told at Cornwall Quarter Sessions, when a young man, who was described as an artist of great ability, was sentenced to two years' imprisonment for larceny, having admitted sixteen offences. The man, who was said to have had ten previous convictions, said that he found the only place he could paint and write his poems and plays was in prison. Now that he is to go there for two years, he may find fresh inspiration, but it is to be hoped that prison officials and visitors will be able to persuade him that he could work just as well as a free man and an honest member of society.

Men in prison have done much to add to our literature, but not because they wished to be there or found it impossible to write elsewhere. It has been in most cases a triumph over adverse circumstances. John Bunyan wrote much during a long term of imprisonment and later, during a shorter sentence, began the immortal *Pilgrim's Progress*. Raleigh spent some of his weary years in prison in writing, and what he was able to complete of his *History of the World* was penned in the Tower. And, of course, there is Lovelace's *To Althea from Prison* in which are to be found those oft quoted lines: "Stone walls do not a prison make, Nor iron bars a cage." What the young artist needs to learn is that stone walls and iron bars are not indispensable to the making of an artist's studio or a poet's retreat.

The Welfare of the Blind

We are fortunate in this country at the co-operation which exists between voluntary bodies and local authorities in connexion with the welfare of the blind, and at the financial support which the public still give in this field of social activity. Employment is, however, the best form of welfare for the blind as for others. Rehabilitation, through training, is sometimes more difficult in the case of those who lost their sight during their active life than the training of persons who have been blind throughout their lives. The rehabilitation centre at Torquay, which is well worth a visit by anyone in that neighbourhood, aims, wherever possible, at enabling blind persons to resume the occupations which they followed before becoming blind. The handicap of blindness seems to be so appalling to many sighted people that it is sometimes assumed that a blind person must always be helped ; that he must even be guided about the house. Blind persons like to be thought of as normal persons. They want to share in the life of the community. For example, although they cannot see flowers they can appreciate them through smell, of which they have a keen sense. This has lead to a movement for the provision of scented gardens and one was opened recently at Ilford where, with the co-operation of the parks department, a bed of scented flowers with Braille labels has been provided by the Rotary Club. Others have been provided at Bristol and Stalybridge. Local authorities are now thinking out their Coronation programmes, and we are sure the blind will not be overlooked. We commend the scented gardens scheme as one way, without much expenditure, by which the blind can be given a part in these celebrations by a scheme of a permanent nature.

Reorientation of Rent Restrictions

Control of rents provides an excellent illustration of the jungle of difficulties which may sometimes develop from initially reasonable and good legislation. Nobody could seriously question the need for measures of control arising from actual and predictable circumstances of the two world wars. Equitable relations between its subjects, the maintenance of national morale, and the avoidance of social disorder made the intervention of the State essential to combat the effects of economic upheavals which occur in and after the cataclysmic onrush of events caused by universal war. A major weakness of most legislation, however, especially any which attempts to dam, divert or otherwise divest broad and swift streams of economic forces of their power, is its lack of resilience to different circumstances as they evolve during the passage of time. Parliament can hardly be regarded as unwatchful or unaware of changing conditions but may sometimes be open to criticism that necessary action is tardy, even excluding the persistent patter of an impetuous and impatient minority who would always be tinkering with comparative details.

Half-a-dozen years ago, the question of general sanction to raise the permitted percentage increase of domestic rentals of millions of tenants was a comparative detail amongst wider issues governing the nature of the later economic scene which it was hoped would be so infused with material prosperity that the level of rentals would not be a problem of acute public concern. In some quarters, of course, animadversion to landlordism and other political considerations were and are important factors. But the main question seems now to have become one for decision by hard heads instead of soft hearts, whether the nation is going to make proper financial provision for the maintenance of a large volume of essential housing accommodation or allow it to moulder away for want of repair and upkeep. Trebled costs in respect of accumulated requirements make pints of income inadequate to meet quarts of expenditure.

An ideal system of rents would have several elements which are absent to-day. One is assurance that landlords retained only such profit as is fair after being allowed to charge rent including provision for services up to a certain standard ; another, that tenants should pay rent related to the quality and extent of their use, implying care and number of persons ; a third, that housing accommodation is not under-occupied by persons whose inferior need could release some for others with urgent need ; a fourth, that landlords and tenants should be as free as possible to regulate their own relationships without the intervention of or subjection to supervisory processes expensive in money and man-power to administer, and so on. Those elements would naturally be held nearer to counter-poise giving the right emphasis to each if the volume of available housing accommodation was coincident with the capacity and desire of individuals to expend income on it. At the moment, for whatever reason, right or wrong, supply does not equal demand, and it seems to be accepted that the Government have a duty to utilize or obtain power, and organize its use, to maintain and deploy the nation's housing assets in ways conducive to economy of national resources and equitable distribution of use among individuals.

In present circumstances, which seem unlikely to be markedly modified in the near future, it appears inevitable that means will have to be devised and applied to provide landlords with more finance for upkeep of housing accommodation where, and only where, justified. Until a finite term can be set to the equation of supply with demand, less reliance will have to be placed on automatic adequacy of uniform percentage additions applied nationally, and more on additions assessed for county districts, zones or particular properties. Councils of county districts possess, or could with relatively slight effort come into possession of, better knowledge of local conditions and requirements than other agencies might laboriously acquire, and, given principles formulated by Parliament, those councils ought to be able to regulate housing relations between landlords, tenants and community so that the responsibilities and rights of each receive proper treatment.

Handicapped and Disabled Persons

County and county borough councils are concerned with making arrangements under s. 29 of the National Assistance Act, 1948, for promoting the welfare of handicapped persons, and the Ministry of Labour and National Service are responsible, under the Disabled Persons (Employment) Act, 1944, for their rehabilitation and placing in employment. It is important, therefore, that there should be co-operation between the two authorities. To this end the Ministry have agreed that, on the request of any local welfare authority, information will be supplied as to the number of persons in each of the appropriate medical categories, together with the number of those who are unemployed. The Ministry must, however, preserve the confidence of those who are on their registers and although a local authority should be in a position to help with the welfare of any individual case this help must not be thrust on any one who does not want it, however misguided he may be in adopting this attitude. Fortunately, there is still some measure of freedom in deciding whether we will or will not accept some particular public service. It is, therefore, only with the consent of the person concerned that medical details of any case will be supplied to the local authority, and then in confidence. After a scheme prepared by the local authority under s. 29 has been approved by the Ministry of Health, the local officers of the Ministry of Labour and National Service will assist local authorities to inform persons of the arrangements. The names and addresses of the persons concerned will not, however, be disclosed, but any leaflet prepared by the local authority will be forwarded by the Ministry with an indication that any reply should be sent direct to the local authority concerned.

SIGNING OF DEPOSITIONS BY THE COMMITTING JUSTICE

By W. SCOTT, LL.B. (Lond.), *Deputy Clerk to the Justices, Walsall*

At a Midlands Court of Quarter Sessions recently, the Recorder refused to admit in evidence the deposition of a witness who was too ill to attend at the trial, on the ground that the actual document recording the deposition was not signed by the committing justice. In actual fact, the committing magistrate had signed the jurat at the end of the whole of the depositions and the names of all the witnesses in the case were inserted at the end as well as in the caption at the beginning in the form prescribed by the Indictable Offences Rules, 1926. The point had been taken by counsel for the prosecution who, in seeking to put the deposition in evidence, drew the attention of the Recorder to the fact that " the deposition did not appear to be signed in accordance with s. 13 (3) (*c*) of the Criminal Justice Act, 1925."

The decision in this case raises once again a point of law which is of great practical importance to magistrates and their clerks, and one which may go to the very root of the validity of the committal proceedings themselves, for if a deposition is not " signed " within the meaning of s. 13 (3) (*c*) of the Act of 1925 (which governs the admissibility of depositions at the trial when a witness for certain reasons is not present), it is at least arguable that it is also not "signed " for the purposes of s. 17 of the Indictable Offences Act, 1848 (which regulates the procedure to be followed at the preliminary examination) and so may invalidate the committal (*see R.* v. *Gee* [1936] 2 All E.R. 89 ; 100 J.P. 227).

Let us examine the statutory provisions on the point. Section 17 of the Indictable Offences Act, 1848, provides that the examining justice " shall take the statement (M) on oath or affirmation of those who should know the facts and circumstances of the case, and shall put the same into writing and such depositions shall be read over and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same." Apart from a provision relating to oaths the remainder of this section was repealed by the Criminal Justice Act, 1925, s. 12 (7) of which provides " The depositions . . . shall be signed by the justices before whom they are taken in such manner as may be directed by rules made under this Act, and where any such charge is inquired into by two or more examining justices, the deposition of a witness . . . shall for all purposes be deemed to be sufficiently signed if signed by any one of those justices." The Indictable Offences Rules, 1926, made under this Act, annul the form M (referred to in s. 17 of the Indictable Offences Act, 1848, *supra*) and substitute a new form M in substantially the same terms.

The admissibility of a deposition as evidence against the accused at the court of trial is governed now by s. 13 (3) of the Criminal Justice Act, 1925 (which replaces, with slight amendment, the repealed portion of s. 17 of the 1848 Act referred to above), and provides as follows : " Where any person has been committed for trial for any offence, the deposition of any person taken before the examining justices, may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence. The conditions hereinbefore referred to are the following :

(*a*) The deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section (*i.e.*, relating to conditional binding over of witnesses) or of a witness who is proved at the trial by the oath of a credible witness to be dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf ;

(*b*) it must be proved at the trial by a certificate purporting to be signed by the justice before whom the deposition purports to have been taken or by the clerk to the examining justices or by the oath of a credible witness that the deposition was taken in the presence of the accused and that the accused or his counsel or solicitor had full opportunity of cross-examining the witness ;

(*c*) the deposition must purport to be signed by the justice before whom it purports to have been taken,"

and then follows a proviso which is not relevant for present purposes.

There does not appear to be any reported case upon the interpretation to be placed on s. 13 (3) of the Criminal Justice Act, 1925, but in *R.* v. *Parker* (1870) 34 J.P. 148 the Court for Crown Cases Reserved, consisting of five judges, was called upon to decide the admissibility of a deposition of a witness who had died between the committal proceedings and the trial, the relevant statutory provision in that case being s. 17 of the Indictable Offences Act, 1848. The court decided that it is sufficient if the signature of a committing magistrate be attached at the conclusion of the depositions of the several witnesses in the form in sch. M of the Indictable Offences Act, 1848, and his signature need not be subscribed to the deposition of each witness respectively. As in the present case under discussion, the deposition was tendered and objected to on the ground that it did not purport to be signed by the justices before whom it purported to have been taken, but the objection was overruled.

The relevant portion of s. 17 of the Act of 1848 as then in force was in very similar terms to the provisions of s. 13 (3) of the Criminal Justice Act, 1925, *supra* ; indeed, except for the fact that the later provision extended the admissibility of depositions to cases where the witness is conditionally bound over or insane or kept out of the way by or on behalf of the accused, and provided in condition (*b*) that the presence of the accused and the right of cross-examination could be proved by certificate as well as by direct evidence, the wording is almost identical. In particular it was a condition precedent to the admissibility of such a deposition under the repealed portion of s. 17 (as it is under condition (*c*) of s. 13 (3) of the new Act) that the deposition must " purport to be signed by the justice before whom it purports to have been taken."

Giving judgment in the case of *R.* v. *Parker*, *supra*, Cockburn, C.J., said : " Upon the first point as to the admissibility of the deposition, we have the authority of two cases for their reception, the case of *R.* v. *Young*, and the case of *R.* v. *Lee*. In the case at the Central Criminal Court before me (*R.* v. *Richards*, 4 Fos. and Fin. 860, which was relied upon by the appellant as an authority for the deposition being rejected) the same point arose, but my attention was called to s. 17 of the Act without any reference to the schedule. On reading s. 17 I was of opinion that that section strictly construed required that the deposition of each witness should be signed by the committing magistrate. After my decision the clerk to the magistrates called my attention to the decided cases and the schedule. On looking at the two together,

and seeing that the language of s. 17 is not conclusive and that the section says that such depositions shall be read over to and signed *respectively* by the witnesses, and the word " respectively " is omitted when it speaks of the signature by the magistrate, and reading the section by the light of the schedule—which, after giving the form of the caption and the introductory part of the depositions of each witness, concludes " The above depositions of CD and EF were taken before me " and the magistrate is then to affix his signature, I thought that the section did not exact from the magistrate that he should affix his signature to the deposition of each witness, but that it was enough if he attached it to the entire set of depositions as a body. Accordingly I informed Mr. Oke, the magistrates' clerk, that I had too hastily decided the point, and authorized him to state that I did not intend on any future occasion to abide by it. I think, therefore, looking at the section and schedule together, it is enough if the depositions are signed according to the form given in the schedule." In the same case Byles, J., said : " I am of the same opinion. The statute intended plainly that the committing magistrate's signature should be affixed to the whole of the depositions when attached together. If all the depositions had been written on one sheet of paper, the signature of the magistrate at the end would clearly have been sufficient, and it does not, in my opinion, make any difference that the several depositions have been sewn or attached together by some other means."

It should be noted that the form in the schedule referred to by Cockburn, C.J., is in the same terms as form M in the substituted provisions contained in the Indictable Offences Rules, 1926, except that provision is made in the current form for a statement that the depositions were taken and sworn in the presence of the accused and that he, his counsel or solicitor had an opportunity to cross-examine the witnesses—an extension which was deemed necessary by virtue of s. 13 (3) (*b*) of the Criminal Justice Act, 1925, which allows the matters therein required, to be proved by certificate of the examining justice.

It is difficult to see why the point of admissibility raised before the Recorder in the case under discussion is not covered by the decision in *Parker's* case. *R.* v. *Parker* is still cited by all the leading text books on the subject, in footnotes to the words " shall be signed by the justice " where those words occur in the first part of s. 17 (still in force), as an authority for the proposition that the justice's signature to a jurat in form M at the end of the depositions is sufficient, and yet it seems to be overlooked by the text books that the basis of the decision in that case was that the signing of the depositions in that form *also* satisfied the further requirement of s. 17 (as it was then) that such deposition must " *purport to be signed by the justice before whom it purports to have been taken* "—the very words, be it noted, which are re-enacted by s. 13 (3) (*c*) of the Criminal Justice Act, 1925, and upon which the objection in the Midlands case was raised.

Surely the fact that these italicized words are taken out of s. 17 of the 1848 Act and re-enacted in exactly the same terms in s. 13 (3) (*c*) of the Act of 1925 and the fact that a new form M is substituted for the old form M (in substantially the same words) does not affect the binding force of *R.* v. *Parker* upon the interpretation of the present law. If *R.* v. *Parker* is still a sufficient authority for the deposition having been correctly signed for the purposes of the unrepealed portion of s. 17 of the Indictable Offences Act, 1848 (*and this has never been doubted*) there seems to be no good reason why it should not be accepted under the re-enacted provisions of that section.

This is the view which appears to be accepted by *Archbold's Criminal Pleading*, 32nd edn. (1949) which (at p. 438) cites *Parker's* case as establishing the " now settled " principle that " although all the depositions are not taken on one sheet of paper, it is not necessary that each deposition should be signed by the magistrate taking it ; therefore, where a number of depositions taken at the same hearing on several sheets of paper are fastened together and signed by the magistrate taking them once only at the end of all the depositions, in the form given in the sch. (M) to 11 & 12 Vict., c. 42 (*now Form (M) in the Schedule to the Indictable Offences Rules*, 1926, dated June 11, 1926) one of these depositions is admissible in evidence, after the death of the witness making it, although no part of it is on the sheet signed by the magistrate." But again, this quotation from *Archbold* only appears as a footnote to the first part of s. 17 of the Indictable Offences Act, 1848, which is still in force, and there is no cross-reference to it under s. 13 (3) (*c*) of the Criminal Justice Act, 1925, which appears on p. 439 ; and yet this " settled principle " is meaningless unless the ruling in *Parker's* case given in support of the interpretation of s. 17 also satisfies (as it is submitted it does satisfy) condition (*c*) in the 1925 Act, s. 13 (3)—for the very question of admissibility of depositions on (*inter alia*) the death of the witness depends entirely upon this latter section.

It may be that the objection to applying the rule in *Parker's* case is based on the view that the magistrate's signature to the jurat cannot at one and the same time serve the purpose both of fulfilling condition (*b*) and also condition (*c*) of s. 13 (3) ; if that be so, it is submitted that such an objection cannot be sustained. Indeed in *R.* v. *Parker* itself, the one signature was held sufficient to satisfy two conditions—the one governing the admissibility of the evidence under s. 17 and the other that the deposition must be in the form set out in the schedule. Moreover, if condition (*b*) of s. 13 (3) of the 1925 Act is satisfied by means of a certificate from the *clerk to the justices*, the basis of this objection falls to the ground. And what sufficient reason can be put forward for drawing a distinction between cases where different methods of satisfying condition (*b*) are employed ?

This is not the first time that the admissibility of depositions taken in similar circumstances has been questioned (see, *e.g.*, 107 J.P.N. 1 and 25) but it is perhaps significant that in none of these cases (including the one which gave rise to this article) was the attention of the court of trial directed to the ruling in *R.* v. *Parker*. Even so, it must be admitted that evidence was given before the Departmental Committee on Depositions set up by the Home Secretary in March, 1948, that certain doubts had been expressed by courts of Assize and quarter sessions as to whether the decision in *R.* v. *Parker* was still binding. The report of the Departmental Committee (Cmd. 7639) was published in February, 1949.

The Committee, it will be remembered, sat under the chairmanship of Mr. Justice Byrne to inquire into the existing practice with regard to the taking of depositions in criminal cases and to report whether any, and if so what, alterations in the law are necessary or desirable with a view to securing the more effective dispatch of the business of the courts while retaining public confidence in the administration of justice. At para. 28 of the report the Committee discussed the present question at some length, and for convenience, it is thought that it would not be out of place to reproduce the whole of that paragraph here :

" 28. Section 12 (7) of the Criminal Justice Act, 1925, provides that the depositions shall be signed by the justices before whom they are taken in such a manner as may be directed by rules made under that Act and where any such charge is inquired into by two or more examining justices, the deposition of a witness or the statement of the accused shall be deemed to be sufficiently signed for all purposes if signed by any one of those justices. We have been told that despite various decisions of the courts and the terms of form M in the Indictable Offences Rules, 1926, some judges and chairmen of quarter sessions have

insisted upon the deposition of each witness being signed by the committing justice. Our attention has been directed to the case of *R.* v. *Parker* (1870) 34 J.P. 148, in which it was decided that the signature of the justice to the jurat at the end of the whole of the depositions was sufficient, although they filled several sheets, provided that the names of all the witnesses were inserted at the end as well as in the caption at the beginning. In our opinion this procedure saves time, and the interests of the accused would appear to be sufficiently safeguarded. It may well be that the reason why it is not universally approved is that under s. 13 (3) (*c*) of the Criminal Justice Act, 1925, one of the conditions that must be complied with, before the deposition of an absent witness may be read at the court of trial, is that ' the deposition must purport to be signed by the justice before whom it purports to have been taken,' and we understand that it is considered by some legal authorities that the procedure approved in *Parker's* case does not comply with this requirement. In our opinion it is undesirable that a matter of this importance should remain in doubt. We have already expressed the view that this procedure is convenient, and we can see no objection to its use in cases to which s. 13 (3) (*c*) of the Criminal Justice Act, 1925, applies and in which it is proposed to read the deposition in the absence of the witness."

It is to be regretted that in spite of this forthright and authoritative recommendation of that Committee, Parliament has still, after a lapse of over three years, not found time to resolve the doubts that apparently still exist, by amending s. 13 (3) (*c*) of the Criminal Justice Act, 1925, in plain and unequivocal terms, even if, in the mass of parliamentary business it has not found it possible to consider some of the more complicated recommendations of the Committee.

No answer to the problem will be found in the provisions of the Magistrates' Courts Act, 1952, or the Rules made under s. 15 of the Justices of the Peace Act, 1949, as amended by that Act, both of which are due to come into operation on June 1, 1953. The 1952 Act itself is merely a consolidating statute which was passed under the provisions of the Consolidation of Enactments (Procedure) Act, 1949, the latter Act allowing for corrections and minor improvements only in the existing procedural law affecting magistrates' courts and consequently the Magistrates' Courts Act does not touch upon questions of substantive law affecting the higher courts. Under the new Act the Indictable Offences Act, 1848, will be repealed, and, if the present draft Rules are adopted, the Indictable Offences Rules, 1926, will also be annulled, but the general effect of the new consolidated provisions of both the Act and the Rules will remain the same. Rule 5 (2) (as at present drafted) does provide an innovation by enacting that " one of the examining justices shall sign the depositions," but this does not solve our difficulty, it simply begs the answer to our question.

The fact remains that even when the new provisions are in force, s. 13 (3) (*c*) of the Criminal Justice Act, 1925, will still govern the question of the admissibility of depositions at the court of trial, and until this section is amended by statute or until there is some authoritative decision of the higher courts upon the interpretation to be placed on that section, doubts may still continue to be cast upon the validity of the procedure adopted in *Parker's* case.

Surely, if as Goddard, J. (as he then was), said in *R.* v. *Gee*, *supra*, " one of the objects of the (Indictable Offences) Act was to standardize procedure before justices where indictable offences which might have to go for trial are concerned, and it is of the utmost importance that magistrates should understand that the provisions of that Act should be strictly complied with " then justices are entitled to know, within a reasonable degree of certainty, what the provisions of that Act (as amended) mean. The Departmental Committee on Depositions have expressed their own authoritative view in very plain terms that the provisions of the Act, as amended, are still satisfied if the procedure adopted in *Parker's* case is followed, but, of course, this view of the Departmental Committee is not in any way binding on the courts, and justices will have to decide for themselves whether to adopt it. It is hoped that the somewhat detailed examination of the law on this subject which the writer has attempted to carry out, will help the justices and their clerks to make their decision.

No doubt it will be suggested that the simple answer to the problem is that justices should sign every sheet of the depositions, but when it is remembered that in at least one recent case the depositions ran into several hundred sheets, it will probably be agreed that such a dilatory and inconvenient procedure hardly lends itself to securing the more effective dispatch of the business of magistrates' courts which all who are concerned in the administration of justice, and in particular justices and their clerks, would greatly welcome.

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Mrs. Anne Mary Dennistoun-Sword, 9, Woodhayes Road, Wimbledon, S.W.19.

THE SMALL TENEMENTS RECOVERY ACT, 1838 — I

By GRAEME FINLAY, *Barrister-at-Law*

This short Act consisting of eight sections and a schedule was introduced as an Act " to facilitate the recovery of possession of tenements after due determination of the tenancy." It does not apply to Scotland or Ireland (s. 8).

Its main provisions relate to procedure for recovery of possession ; service of notice of intention to apply to the justices for that purpose ; proceedings by action of trespass where a warrant is improperly obtained ; proceedings on the bond in actions of trespass, and the protection of justices and constables issuing or executing warrants.

It is surprising to what an extent the machinery of this comparatively obscure Act has been entrusted with the task of recovery of land and premises by the legislature. First, apparently, the School Sites Act, 1841, applied it to the recovery of school premises held over by a master or a mistress ; then the Defence Act, 1859, enlisted its help for the purposes of recovery of land by the Secretary of State for War. Similar provisions applied the Act to the recovery of land by the Admiralty (the Admiralty Land and Works Act, 1864) and to land held over by the officers of a charity (the Charitable Trusts Act, 1869), whilst the Small Dwellings Acquisition Act, 1899, applied its assistance to the recovery of houses by local authorities making advances under that Act.

In more recent times the Act has been invoked for the recovery of small holdings (Small Holdings and Allotments Act, 1926, s. 7) ; for the recovery of possession of houses by local authorities for the purpose of exercising their powers relating to housing (Housing Act, 1936, s. 156 (2)) ; and for the recovery of buildings on land acquired or appropriated for the purposes of a development plan (Town and Country Planning Act, 1944, s. 30 (4)). The Civil Aviation Act, 1946, also applies its provisions to the recovery of possession of any building to the possession of which the Minister of Civil Aviation is entitled on the termination of a tenancy.

There can, therefore, be no question of minimizing the importance of the Act which is so broadly relied on for the recovery of land and premises. Notwithstanding this reliance high judicial authority in the shape of Lord Goddard, C.J., has, however, pointed out the complications which may arise under the Act in the strongest possible terms :

" In cases under the Small Tenements Recovery Act, 1838, questions of the utmost difficulty arise. This Act is full of pitfalls and many technical considerations apply. Parties would be very much better advised if they now took advantage of the county court, when proceedings for the recovery of houses are much simpler and also they have the advantage that a trained lawyer—a county court judge—hears the case " : *Bowden* v. *Rallison* [1948] 1 All E.R. 841 ; 112 J.P. 283.

The Housing Act, 1936, extends the powers of recovery under the Act without regard to the value or rent of the building in the following terms :

" Nothing in the Rent and Mortgage Interest Restriction Acts, 1920 to 1933, as amended by any subsequent enactment shall be deemed . . . to prevent possession being obtained (*a*) of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to the housing of the working classes " (s. 156 (1)).

It goes on :

" When a local authority for the purpose of exercising their powers under any enactment relating to the housing of the working classes require possession of any building or any part of a building of which they are the owners then, whatever may be the value or rent of the building or part of a building, they may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy has expired, or has been determined " (s. 156 (2)).

In *R.* v. *Snell. Ex parte Marylebone Borough Council* [1942] 1 All E.R. 612 ; 106 J.P. 160, it was, therefore, held that a local authority which has, in the exercise of its powers under the Housing Acts, provided houses for the accommodation of the working classes is entitled under the above subsection to apply to a magistrate under the Act of 1838 to recover possession of a house the rent of which is in arrear for more than one week, notwithstanding that the rent of the house is more than £20 a year, since the power of management conferred on the local authority by s. 83 of the Housing Act, 1936, includes the power to recover possession of a house the rent of which is in arrear so that the local authority may let it to another member of the working classes.

The main operative clause of the Act (s. 1—Procedure for recovery of possession) provides in effect that where the rent of premises does not exceed £20 a year and the interest of the tenant of such premises has been determined by a legal notice to quit, the landlord may give him notice of his intention to proceed to recover possession under the authority of that Act. If the tenant does not appear, or fails to show cause why he does not give possession, the justices may issue their warrant directing the constable to give the landlord possession within a period of not less than twenty-one nor more than thirty clear days from the date of the warrant . . . The foregoing appears to be the short effect of the section which is expressed at considerable length and complexity (it runs into nearly fifty lines) in the statute.

It is necessary to examine and analyse in detail the wording of the section . . .

" When and so soon as the term or interest of the tenant of any house, land or other corporeal hereditament held by him at will or for any term not exceeding seven years, either without being liable to the payment of any rent or at a rent not exceeding the rate of twenty pounds a year, and upon which no fine shall have been reserved or made payable shall have ended or shall have been duly determined by a legal notice to quit or otherwise . . . "

The first point to notice is that this Act only applies when the relationship of landlord and tenant exists (*Webb* v. *Fordred* (1868) 32 J.P. 804 ; *Brown* v. *Newmarch* (1875) 40 J.P. 212) and that this relationship must be duly determined by notice to quit " or otherwise." The last two words allow for the determination of the tenancy in accordance with the express stipulation of the parties.

The Act goes on :

" And such tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively it shall be lawful for the landlord of the said premises or his agent to cause the person so neglecting or refusing to quit and deliver up possession to be served with a written notice, in the form set forth in the schedule to this Act, signed by the said landlord or his agent of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act . . . "

So far as local authorities are concerned a considerable number of practical points may arise where, for example, a local authority is determined to take proceedings under the Act for the recovery of possession of council houses to which the Rent Restrictions Acts do not apply and in respect of which they are required to keep a housing revenue account.

The standard form of tenancy agreement which tenants are required to sign in such cases will provide that tenants shall not assign, underlet, or part with the possession of the demised premises or any part thereof and that they shall not take in lodgers.

As a general rule a local authority insists that council tenants wishing to take another family in with them must apply to the local authority for consent thereto. If consent is given, it is normally given in the form of a letter written by the housing manager and addressed to the tenant authorizing the tenant to take in a lodger, but it appears that in many cases tenants take other people in without first obtaining the local authority's consent.

It also appears that, where both the council tenant and an irregular occupier refuse to give up possession of a council house, proceedings under the Act for recovery of possession can be taken under the Act against both the tenant and the irregular occupier as well (" and such tenant or (if such tenant do not actually occupy the premises, or only occupy a part thereof) any person by whom the same or any part thereof shall then be actually occupied shall neglect . . . to deliver up . . . the premises or . . . such part thereof it shall be lawful for the landlord . . . to cause the person so neglecting . . . to be served with a written notice "). It appears that it would not be sufficient to proceed against the tenant only, relying on this to operate on the irregular occupier as well. Proceedings with the requisite notice are necessary against both the tenant and the occupier if the tenant only occupies a part and somebody else the rest of the premises.

It follows, therefore, from the foregoing that if the local authority require possession of the whole house and the council's tenant's tenancy has been duly determined the written statutory notice set out in the schedule to the Act must be served upon any persons who are on the premises and refuse to leave.

These might include the wife and family of the tenant, a person with whom the tenant's wife commences to co-habit upon the tenant's leaving, and a stranger and his family who come on the premises.

If the tenant goes leaving furniture after the tenancy has been determined it is clear that he is still a tenant in actual occupation of the premises within s. 1 of the Act in the sense that he still makes use of the premises.

If the tenant leaves but before the local authority can put in another tenant he invites a stranger and his family to take possession without the council's consent then it is thought that proceedings may be taken by the council against the stranger as being a trespasser in actual occupation of the premises within the meaning of the section. If the tenant in such circumstances leaves some furniture behind it is thought that he remains a tenant in actual possession as indicated above. Where the tenancy has not been duly determined in order to invoke the help of the Act notice to quit must be served.

If the tenant has died intestate leaving, *e.g.*, a wife and son of full age in the house and the latter refuses to leave it is thought that the tenancy can properly be determined by either (*a*) serving a notice to quit upon the President of the Probate, Divorce and Admiralty Division in accordance with the Administration of Estates Act, 1925, (if it is not proposed to take out letters of administration) or (*b*) following s. 167 (*b*) (*c*) of the Housing Act, 1936, by leaving the notice at the last known place of abode of the tenant addressed to the "lessee" of the premises (*e.g.*, the administrator or administrators if letters of administration have been taken out) and delivering it to some person (*e.g.*, wife or son) on the premises if it is not practicable after reasonable inquiry to ascertain the address of the legal personal representatives. In this case the statutory notice of intention to proceed to recover possession under s. 1 of the Act should be served on both wife and son. Other permutations of circumstances can, of course, occur in practice. For example, the tenant might without the council's consent and before his death invite a third party and his family to occupy part of the house. Such action on the tenant's part would be contrary to the terms of the letting and the third party and his family would be trespassers as against the council. The tenancy would be determined by serving a notice to quit on the President (if no letters of administration have been taken out), or the administrators (the "lessees") in accordance with s. 167 (*b*) (*c*) as indicated, *supra*. The notice to quit could be delivered to "some person on the premises" and the statutory notice under s. 1 served on any person actually occupying the premises.

If the tenant has disappeared and his tenancy has not been determined s. 167 of the Housing Act, 1936, could, it is considered, be brought into effect for the purposes of serving notice to quit upon the vanished tenant. The section provides that "any notice, order or other document required or authorized to be served under the Act" may be served by the various alternative methods indicated in the section :

Whilst the notice to quit is required by the common law it is considered that the service of the notice is undoubtedly authorized under the Act of 1936 (*vide* s. 151 (2)).

If, for example, a third person is left in the house then no doubt service in accordance with s. 167 (*b*) would enable a responsible official of the council to explain the notice orally to the occupant as a prelude to serving the eviction notice under s. 1 of the Act of 1838. In the same way s. 167 (*e*) enables the notice addressed to the owner, lessee, or occupier of the premises to be served by delivering it to some person on the premises or in default by affixing it to some conspicuous part thereof. This would equally enable explanation of the notice by a responsible officer of the council.

After securing the due determination of the tenancy and the service of the written notice of intention to proceed to recover possession under s. 1 of the Act (unless peaceable possession is given of the tenement within seven clear days from the service of the notice) the owner must apply to the justices of the peace to issue their warrant directing recovery of possession of the tenement. This is done by means of the form of complaint before two justices set out in Form 2 and the schedule.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CHIEF CONSTABLES' ANNUAL REPORTS, 1951. SALFORD

I wish to point out that the population of Salford is incorrectly stated in the commentary on the Annual Report of the Chief Constable of Salford, in your issue of August 30, 1952.

The figure of 223,438 quoted by you is the 1931 census figure ; the population at the 1951 census was 178,036.

Yours faithfully,

H. J. SMITH,
City Treasurer.

City Treasurer's Office,
Town Hall,
Salford, 3.

CONTROL AND DIRECTION OF THE POLICE

By A SENIOR POLICE OFFICER

Once again, at 116 J.P.N. 519, there has appeared a contributed article entitled " The Need for Police Scientific and Technical Research " which appears to advocate as a solution to its own criticisms of the Police Force the adoption of " a centralized or regionalized police machine."

This is the second time that an article has appeared in these columns which by implication at least suggests that local police control is a drag on efficiency and that nationalization is the only hope for national as well as local police effectiveness. The implication is supported by the remarkable and unequivocal statement that " co-ordinated progress in an organization like our Constabulary is at present impracticable and unworkable." It would be a serious omission if the statement and its implication remained unanswered.

Well informed constructive criticism is welcomed in the police service. It acts both as a tonic and a challenge to many hundreds of police officers who are ever on the alert to harness to the police machine scientific, engineering, technical or any other aids which may sensibly be adopted to assist them to meet changing conditions, year by year or even month by month.

Let it be said, too, that local police authorities and the Home Office (especially through the Police Inspectorate) are, broadly speaking, willing and anxious to lend their encouragement and support to progressive evolutionary movements to keep abreast of modern times. Right through the police service, organizations belonging to each rank from constable to chief constable are created for efficiency as well as welfare reasons. Literally scores of conferences in the aggregate are held daily in individual police forces, in advanced training centres in the various conference districts or in London, with the object of increasing efficiency not only locally but nationally. It is indeed doubtful whether any business organization excels the police in efforts to improve organization and methods. Competition is as constant and as keen as co-operation and neither is ever permitted to undermine co-ordination. Co-ordination is, in fact, the key note of nearly every major improvement which is introduced. In these matters the police are " back room boys " in more senses than one. They work with discretion if not in actual secrecy. The reason is obvious. Within recent years many a criminal has been astounded at the swiftness and sureness of police action. Explanations are not generally given.

Despite the fact that no money is better spent than in the prevention, detection and prosecution of crime, the police are the first to recognize that there is a limit to the demands which can reasonably be made on national and local exchequers. Each force co-operates with others. There is no need for every force to have its own police dogs, aeroplanes or helicopters, or even mobile police stations or " walkie-talkie " radio, yet all these are available for use by any Force as a call-in aid as are also specialists from Scotland Yard if the need should arise.

Is it certain that nationalization or regionalization as ordinarily understood would be a spur to further progress? Is it not even possible that either would be an actual hindrance, quite apart from the tremendous importance of the principles involved? In this connexion, the writer would respectfully refer to his article at 113 J.P. 92, entitled " No Nationalization of Police."

The accepted principle of dual national and local control of police is a constitutional matter of supreme importance. Nothing should be surreptitiously slid through any back door which is likely to undermine that principle. With that firmly in mind the police, for their part, would be the last to maintain that the British police system of control is without imperfections. Whatever the system there would be disadvantages, and one can only prefer a system where disadvantages are less serious than in others and then consider what can be done to alleviate or remove as many defects as possible.

The principal defect in our present system lies, it is believed, in the fact that chief officers of police are completely independent of one another and have absolute discretion in the action they take, the methods they employ, the adoption or otherwise of any new idea and the extent of their co-operation and co-ordination with all other forces in the country.

The Home Office, whilst exercising a strong supervisory influence through its Inspectorate, has no authority to assume responsibility for the actions of the provincial police. It is perfectly true that the Home Office has secured a very appreciable degree of homogeneity in the management and direction of all police forces and that chief constables themselves have without authoritative supervision, succeeded in establishing a remarkable degree of unification from the point of view of national police efficiency. In the given circumstances, however, it may be conceded that the wholly admirable efforts made by the Home Office, Her Majesty's Inspectors and conferences of chief constables to establish that intimate cohesion which is so vitally necessary can only be partially successful. The suggestion is already on record in police literature for the introduction of a co-ordinating and energizing influence by means of which to achieve the desired end. This could be done without disturbing unduly the balance of local and central control which has proved to be so suited to the British character. There is, it is suggested, need for a much closer supervision than that afforded by the annual visits of Her Majesty's Inspectors of Constabulary, the extent of whose districts and the onerous nature of whose duties make it impossible for them to do more than the admirable work which they are doing.

What is needed, is, it is believed, a grouping of police districts into a number of defined areas each under the advisory supervision of a police official who might be designated the District Director of Organization (or the D.D.O.) who should be the guide and mentor for organized co-operation within his own area and for satisfactory liaison between his own and all other areas. The D.D.O. might well also be regarded as the liaison officer between the Home Office and local authorities in all matters involving capital expenditure or the introduction of new ideas. Complete local control in all other matters would be retained. The Director would, in these circumstances, possess no direct executive powers, but if he were vested with authority to report *specially*, as well as periodically, to the Secretary of State upon the efficiency or otherwise of all police forces in his area, his position would be strong and authoritative. No local authority could afford to run the risk of facing and having to answer to the ratepayers for the heavy financial penalty which would be entailed in the loss of the Treasury grant, through failure to comply with the Director's requirements.

The number and boundaries of the new areas would be a matter for careful consideration, but it is suggested that there should not be less than six nor more than nine. The D.D.O.'s could be under the control of an Inspector General of provincial police whose central position at the Home Office would enable him to ensure the co-operation which is so vitally necessary between the provincial police and the police of the metropolis.

All the links in the chain of co-ordination would thus be complete.

The carrying out of an evolutionary movement of this nature would not, it is felt, affect vitally, or even unduly, the existing basis of local control, and protagonists of the dangerous doctrine of nationalization of police would be finally answered.

MISCELLANEOUS INFORMATION

LAND REQUIREMENTS IN RESIDENTIAL AREAS

A handbook entitled "The Density of Residential Areas," produced by the Ministry of Housing and Local Government, has been recently published, price 5*s*. This handbook deals with the problems of the amount of land required for different projects in residential areas, and in particular for housing.

Chapter I deals with the general physical background of the subject. The first section distinguishes four different aspects of density—a classification which is fundamental to the rest of the book and indeed to a proper understanding of the whole subject. These four aspects, which are dealt with in more detail in subsequent sections of Chapter I are :

(i) The question of sufficiency of accommodation. There must be enough accommodation for all the various households. The best housing can become unsatisfactory if it is overcrowded, or if, in other words, the density within the dwellings becomes excessive. (ii) Density of dwellings on the ground, which is concerned with the proximity of dwellings to one another and which involves questions of daylight, sunlight and space for access and amenity. (iii) Density of residential neighbourhoods, involving consideration of the space required for land uses ancillary to housing. (iv) Density over towns as a whole, in which the major issue of compactness versus sprawl is involved.

Section II explores the subject of density within dwellings. It is pointed out that the planner is not generally concerned with the problems of single dwellings but of dwellings in mass, and he requires in consequence some simple method of measuring accommodation in mass, and of stating the numbers of people such accommodation can properly contain. The habitable room is taken as a convenient unit for the bulk measurement of accommodation, and occupancy rate (or number of people per habitable room) as a means of measuring density within accommodation.

Section III deals with the density of dwellings on the ground, or "net accommodation density" as it is defined. Houses and flats are here taken separately, since the considerations of design applying to each are quite different. As far as houses are concerned the main factors affecting density are the type of house (*i.e.*, whether detached, semi-detached or terrace), the garden size and the space required for daylighting, sunlighting, access and amenity. For two-storey houses with a distance of seventy feet between the rows the theoretical maximum density is about 105 rooms per acre, but this would involve a very close and monotonous lay-out. The introduction of some variety of lay-out and incidentally open space would reduce the density to about seventy-two rooms per acre. For flats, modern ideas of daylighting permit of a great variety of arrangements, but in general it is difficult with heights up to ten or twelve storeys to exceed 200 rooms per acre whilst still preserving the daylighting and a reasonable amount of open space round the blocks.

Section V deals with density in relation to the town. Consideration is given to the classification of land uses in towns and the relative importance of the main groups of users of land, and a comparison is made between the conditions in a number of existing towns and certain New Towns. With present knowledge available, it is difficult to draw general lessons, but it is apparent that most towns present a broadly similar density structure in which densities are higher towards the centre of the town, and that this is the result of a general desire for more spacious conditions in new development coupled with an increase of land value in the centre. These forces are still at work, but it should be remembered that the practice of zoning in rings of decreasing density outwards from the town centre has resulted in much peripheral housing, with the disadvantage of extreme remoteness from the town centre and the main areas of employment.

Section VI examines the important question of the relationship between density and the cost of development. To keep the analysis within bounds only two aspects are considered ; first, the cost of urban rehabilitation in terms of consumption of land, and secondly the effect which increases of density have on the actual financial costs of development. On the first point the general conclusion is reached that whilst considerable areas of land are bound to be required to deal with the overcrowded conditions in our larger towns, there is nevertheless scope for worth-while economies by adopting somewhat higher densities for new development and by paying greater attention to details of design and lay-out. No spectacular increase in density is, however, advised. On the second point it is suggested that on cheap or moderately priced land, development at medium densities is likely to prove most economical, though even here it is thought that a modest increase in density as compared with inter-war practice would not raise total costs unduly.

Chapter II relates the groundwork of Chapter I to the process of making a Development Plan for a town. The major problems likely to arise in connexion with residential areas are summarized, together with the surveys and plans suggested or prescribed in the various regulations and circulars published by the Ministry. The regulations and circulars are discussed together with their application to the making of Town Maps at 6-*in.* scale and also to Comprehensive Development Area maps at 25-*in.* scale.

Chapter III deals briefly with some density problems likely to arise in connexion with the day-to-day administration of planning control. The cases are classified into groups, and some pertinent questions are suggested which should be asked in various kinds of cases before a decision is reached. The vexed problem of the application of average densities to individual sites is discussed.

POLICE OFFICERS AND ATTENDANCES AT COURT

For an experimental period of six months no policemen will be called on to attend court at Dudley on the day following night duty, except in special circumstances. The annual report of the Dudley Joint Board of the Police Federation states that this move is the result of representations to the chief constable, Mr. C. W. Johnson.

CLERKS TO JUSTICES AND NATIONAL INSURANCE

A ruling has been obtained recently by a local authority as to whether a clerk to the justices is insurable as an employed person. The matter was discussed on April 8, 1949, at a meeting attended by representatives from the Home Office, Officers of the Ministry of National Insurance and the Honorary Secretary of the Justices' Clerks Society. The conclusions reached were that while a clerk holds a statutory office, he normally undertakes various additional duties in the performance of which he is or may be subject to a fairly strict and detailed control. Instances of this are the taking of depositions, the examination of witnesses, the giving of legal advice to his bench and the carrying out of executive work of a clerical nature in connexion with the judicial and administrative functions of the bench. It was on the review of such considerations that the Ministry formed the opinion that clerks to justices should properly be regarded as employed under contract of service and are insurable as employed persons (Class I) subject to the general conditions of the scheme.

REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS IN THE COMMONWEALTH

The Registrar-General announced recently the publication of a guide to the Laws governing the registration of births, marriages and deaths in each of the territories of the British Commonwealth and in the Irish Republic.

The booklet, the material for which has been contributed by the Governments concerned, is intended to be a handy reference to the requirements of the Registration Laws of each territory. It contains information as to the relevant statutes in force, the particulars which are required to be registered and by whom they should be given, the periods within such particulars must be given, and the addresses from which certificates of the events may be obtained.

In an Appendix is given a list of the Registers and Records kept at the General Register Office, Somerset House, and elsewhere in England and Wales, of events occurring in this country and abroad. Some of these records date from the sixteenth century.

Abstracts of arrangements respecting Registration of Births, Marriages and Deaths in the United Kingdom and the other countries of the British Commonwealth of Nations and in the Irish Republic. H.M.S.O. price 6*s*. net (or by post from P.O. Box 569, London, S.E.1, price 6*s*. 3*d*.).

EPITAPH

His name will hold an honoured place
He has become a leading case,
His Will had weathered out the storm
And has been proved in solemn form. J.P.C.

REVIEWS

County Court Practice, 1952. London : Butterworth & Co. (Publishers) Ltd. Price £3 15s. net.

The *Annual Practices* are difficult books to review, because they are already well known to every practitioner, and their form is necessarily determined by the Rules of Court, and is therefore stereotyped. This new issue of the County Court Practice does, however, contain a number of new statutes, such as the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951 ; the Leasehold Property (Temporary Provisions) Act, 1951 ; the Maintenance Orders Act, 1950 ; the Rag Flock Act, 1951 ; the Tithe Act, 1951 ; and the Rivers (Prevention of Pollution) Act, 1951. The first two of these are specially important to the county courts. Some of the standing material has also been rearranged and re-written, so as to facilitate reference.

Then there is a new title headed "Admiralty," comprising the old title "Merchant Shipping," with those provisions of the County Court Act, 1934, and of the Rules which govern the practice of the court in Admiralty matters. There is the valuable introduction (which occurs also in earlier editions) upon the county court system generally, followed by the text of the Act of 1934 and Rules of 1936, and the necessary information about costs and fees. All this falls under the heading of "General Jurisdiction."

The second part of the book entitled "Special Jurisdiction" is arranged under alphabetical headings, indicating the particular subject. There is a table of "time and practice," which contains essential matter of vital moment in every solicitor's office ; a county court directory, and the names of the panel of referees under the Landlord and Tenant Act, 1927.

Under each heading of the "special jurisdiction" there will be found the County Court Rules (if any) bearing specially upon it, as for example the County Court (Crown Proceedings) Rules, 1947, which were added to the Rules of 1936 after the passing of the Crown Proceedings Act, 1947. In a work of this sort and size there is inevitably overlapping with other publications. Thus the Limitation Act, 1939, is annotated, although it will be found in editions of the statutes and in textbooks upon a variety of subjects. It will not, however, be then found annotated with especial reference to county court requirements ; the justification of thus reproducing it is that the present volume is designed to be as nearly as possible self contained. Similarly, there will be found extracts from enactments such as the Building Societies Act, 1874 ; the Coal Mining Subsidence Act, 1950, and so forth. The work is thus convenient for purposes of reference, in all matters which may come before the county court. The County Court Rules of 1936 are of course fully set out and annotated, on the same lines as the Act of 1934 itself. There is an index of county court forms, showing under appropriately differentiated entries where each topic is to be found in the *Practice*, and there are useful precedents of costs, printed in connexion with the county court fees orders. No solicitor's office can function satisfactorily without each edition of this work as it appears and, in the local government world, even apart from occasional litigation, we can imagine many occasions arising when it will be convenient to have these statutes of practicall importance readily available.

The Law of Delict in South Africa. By R. G. McKerron. Capetown and Johannesburg : Juta & Co., Ltd. Price 45s. net.

The law of tort owes more to the common law and less to the civil law than most of the legal rules applied in the South African Union. This is not to say that Roman Dutch, or Roman law itself, was in any way deficient : it is because in South Africa, as with us, tort is largely judge made law, and because modern industrial development has given scope for new statements of old principles. Mr. McKerron, who has been Vinerian scholar as well as a University professor in South Africa, has accordingly drawn largely upon English case law, whilst using—naturally and properly—South African decisions where they illustrated his text. It is interesting to see how (for example) liability in tort for injury resulting from the exercise of statutory powers has been dealt with in the South African courts, with our case law before them. Similarly the author's bibliography contains numerous English and American publications. This dual approach should create a demand for the book in this country as in his own, for tort is one of the legal topics in which it is most instructive to see how the minds of lawyers work in different frameworks. The book falls, as do similiar English text books, into two main parts—general and specific. The general part, after brief introductory matters, leads straight into the *Actio Legis Aquiliae*, showing how this (with its pedigree going back well into the Roman Republic) came gradually to swallow up numerous specific actions. By the time of Justinian this stage had been reached, and thereafter there was not much development, either in Rome or in Holland, until modern times. A parallel may be found in the old English technicalities of trespass, followed by nuisance, and by action on the case. It is instructive to trace the parallel lines of thought under the English and Roman Dutch : for example, in the chapter where *Fisher* v. *Ruislip Northwood U.D.C.* [1945] 2 All E.R. 458 is cited with South African decisions. There is a long chapter upon "parties," indicating where special rights or privileges apply, and another upon "remedies," which we found it both interesting and informative to compare with English law.

The part of the book dealing with specific torts follows, at first sight, a familar pattern, since such torts must be either against persons or against property—classing, for this purpose, defamation as a wrong against the person. The differences to be found in different systems are, however, illustrated here as well as in the "general" part. Thus certain offences against women are dealt with more drastically than in English law, this being due, it is said, not to Roman origin but to German influence inspired by the Church. The chapter upon tortious statements which are deceitful (and the like) but are not defamatory, is short, and produces the impression that Roman Dutch lawyers have been less troubled in this direction than our own. "Defamation," on the other hand, is fully dealt with in the longest chapter in the book. This shows, if only incidentally, that the technical distinction between libel and slander, which to most English people seems fundamental, is not so in reality. Again, falsity is not essential to liability—here are two illustrations showing that a system of law not less developed than our own, and in most respect more logical, can exist without notions which to us are axiomatic. The book thus gives an opening for the English lawyer to examine some of his own ideas, and for the tutor to exercise his pupil's minds. South Africa must produce a school of comparative jurists, in the nature of things, because of the impact of the two leading systems of European law upon each other, and in a work like this the student can almost watch the *praetor peregrinus* thinking aloud. Of its accuracy as a statement of South African law we are not qualified to speak, but this is the fourth edition in less than twenty years, which suggests that it is well regarded in the country of its origin. It is well printed and bound and of a convenient size and, altogether, we should judge that it is good value either for a South African practitioner or for an academic lawyer, there or here.

LOCAL AUTHORITY ALLOTMENTS

The subject of allotments is not often in the headlines of local government news, but it may give rise to difficulties of law or administration, and on occasion an economically minded member of the local authority may call to the attention of his colleagues the expense to the rates of this kind of " municipal trading," for allotments are rarely, if ever, known to pay. In these notes, therefore, it is proposed to consider a few points connected with the subject which may be of general interest.

(a) THE PROVISION OF ALLOTMENTS

A well known law dictionary defines " allotment " as meaning a share of land assigned on partition or under an enclosure award, and that is undoubtedly the origin of the word as known to local authorities, but as so known, the term is nowadays understood to refer to a small parcel of land let out for cultivation. For the purposes of the Allotments Acts, 1908 to 1950, an " allotment " may not exceed five acres in extent, and an allotment which does not exceed forty poles in extent and which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family, is technically known as an " allotment garden" (*see* 1922 Act, s. 22 (1)). As the allotments normally provided by local authorities are of this type, and the obligation to provide allotments (where a need therefore can be established) is now confined to allotment gardens (*see* 1950 Act, s. 9, amending s. 23 of the 1908 Act), in these notes we are proposing to refer only to allotment gardens.

The council of a borough (county or non-county), urban district or a parish, or a parish meeting where the parish has no parish council, is a local authority for the purposes of the Allotments Acts, and the law relating to the subject is contained in a series of statutes having varying individual titles, but all of which may be cited together by the title " Allotments Acts, 1908 to 1950 " ; in spite of the modern habit of consolidation, the Act of 1950 is an amending statute only and reference must still be made to a number of earlier Acts.

It is the duty of a local authority, where they are of the opinion that there is a demand for allotments in the area, to provide a sufficient number of allotments, although they cannot now be compelled to provide anything larger than allotment gardens, and a borough or urban district having a population of 10,000 or upwards cannot be compelled to provide anything larger than allotment gardens of twenty poles in extent (1950 Act, s. 9). A statutory procedure exists whereby six parliamentary electors or ratepayers may make a joint representation to the local authority on the matter, and they must take this representation into consideration, but this is not often resorted to as it is usually appreciated that the members and officers of the authority are well aware of the local conditions. In the course of preparing the survey on which the development plans under Part II of the Town and Country Planning Act, 1947, were based, the need for allotments in particular areas covered by the survey was in most cases carefully assessed, and provision for further allotments—where clearly necessary—has been made in most of the resultant development plans now in their final stages of preparation. Under the former planning legislation, an authority, in preparing a planning scheme, were required expressly to " consider what provision ought to be included therein for the reservation of land for allotments " (Allotments Act, 1925, s. 3 (1)), but this has not been preserved in the 1947 Act, no doubt because the provisions for consultation between local planning authorities and district councils contained in s. 10 of that Act were considered adequate for the present purpose.

The difficulty at the present time in this matter of the provision of allotments is often caused by movements of population, aggravated by the large estates being developed under the Housing Acts in areas where previously no allotment need had risen. Shortage of land and the need to economize on capital investment may make an authority chary of venturing on a new programme of allotment provision, especially if their existing allotments are not fully occupied (caused, possibly, by the move away from that part of the town of " working class " population, or by the larger gardens provided for many post-war council houses). Where such problems exist, it is suggested that the authority concerned should review the matter in detail, for " half-hearted " allotments policy may over a period of years prove a very heavy drain on the rates.

Land may be acquired by an allotments authority for the provision of allotments by agreement, or compulsorily with the approval of the Minister of Agriculture and Fisheries (Small Holdings and Allotments Act, 1908, s. 25 (1) and s. 39, and Acquisition of Land (Authorization Procedure) Act, 1946) ; the compulsory acquisition of commons, etc., is subject to special parliamentary procedure (1946 Act, s. 1 (2)), and parish councils are not able to acquire land compulsorily in their own name, but they may request the county council to do so on their behalf (1908 Act, s. 39 (7)).

Apart altogether from the Allotments Acts, and by way of a separate code of law on the subject, a local authority (in this case including a rural district council, but not a parish) may use land in their occupation for allotments, and may requisition land for such use, by virtue of the emergency powers contained in Defence Regulation 62A and in the Cultivation of Lands (Allotments) Orders, 1939 and 1941 ; these powers remain in force under the present law until December 10, 1952 (*see* Supplies and Services (Continuance) Order, 1951 (S.I. 1951, No. 2116), made under the Supplies and Services (Transitional Powers) Act, 1945). In any such case, the allotment holders can be given no security of tenure, unless the authority own the land, for in a case of requisitioned land the authority, having themselves no estate in the land, can grant to the allotment holders no more than licences to use and cultivate the particular plots.

When considering the operation of the Allotment Acts, local authorities should remember the rule (*see* 1950 Act, s. 11) to the effect that their expenses under the Acts (expenses under requisitioning powers may be excluded) may exceed their receipts " by no greater amount than would be produced by a rate of two pence in the pound "—and that maximum expenditure must, of course, include any loan charges due to be paid by the authority, as well as the normal costs of management and upkeep.

(b) MANAGEMENT OF ALLOTMENTS

Allotment tenancies should be granted only to *bona fide* residents within the authority's district, and should be allocated, so far as possible, in order of priority of application—where an insufficient number of allotments are available for letting on a particular site, it is suggested that on occasion members of the authority should satisfy themselves that allocations are being made fairly, as improper methods of allocation can give rise to serious complaints. Care should also be taken to ensure that allotments, when allocated, are used properly, that a reasonable standard of cultivation is maintained and that tenancies of allotments not being used are determined as promptly as the law allows.

The tenancy agreement should be in writing, and should include terms similar to those contained in the Ministry of Health's

" Rules for Management of Allotment Gardens " (*see Butterworth's Encyclopaedia of Forms and Precedents*, Volume 17, p. 345), with the addition, it is suggested, of a clause prohibiting the use of the allotment garden for the purpose of trade or business ; by definition (*see* above) an allotment garden cannot be so used, and an allotment which is used for trade or business may be capable of coming within the definition of " agricultural holding," for the purposes of the Agriculture Acts, with the consequence that it may prove difficult to serve an enforceable notice to quit (*see Stevens* v. *Sedgman* [1951] 2 All E.R. 33).

An allotment garden is intended to be used mainly for cultivation (*see* definition, above), but no objection could normally be raised to the keeping of bees, hens, rabbits, or other animals on part of the allotment, unless such activities are prohibited in the tenancy agreement. Under s. 12 of the Allotments Act, 1950, however (replacing in somewhat different terms, Defence Regulation 62B), no provision in any lease or tenancy agreement shall prevent the keeping, otherwise than by trade or business, of hens or rabbits on any land, provided that the hens or rabbits are not kept in such a manner as to be prejudicial to health or a nuisance, or so as to affect the operation of any enactment. Incidentally, this provision is of general application, and would apply equally to a council house garden as to an allotment.

Provided the rent for the particular allotment does not exceed 10*s. per annum*, and no premium is paid in respect of the grant of the tenancy, no stamp duty will be payable on the agreement (Land Settlement (Facilities) Act, 1919, s. 21 (5)).

As to the rents to be charged for allotments, it seems that a local authority need not now make an economic charge (before the coming into force of the 1950 Act, an authority were required to charge a " full fair " rent), as they may charge such rent as a tenant may reasonably be expected to pay, and they may reduce that rent if they are satisfied that there exist special circumstances affecting any particular person which render it proper for the authority to let the land to him at a lower rent (Act of 1950, s. 10). Not more than a quarter's rent may be demanded in advance under any tenancy, unless the annual rent for the plot does not exceed 25*s*. In fixing rents, however, the authority should not overlook the " 2*d*. rate " rule mentioned above.

The powers and duties involved in allotments management should be entrusted by the authority (being a borough or urban district of a population of 10,000 or upwards) to an allotments committee, who may be a sub-committee of some other committee of the authority, but they need not necessarily be given delegated powers in respect thereof. The allotments committee must comprise persons, other than members of the council, who are experienced in the management and cultivation of allotment gardens and are representative of the interests of occupiers of allotments in the area, and the number of these co-opted members must be at least two, and as " near as may be," one-third of the total number of members of the committee (Allotments Act, 1922, s. 14).

(c) DETERMINATION OF ALLOTMENTS TENANCIES

Allotments tenancies are, in general, subject to the ordinary law of landlord and tenant, but the tenant is given a special statutory protection, in that he cannot be served with a valid notice to quit just at any time for which provision may have been made in the tenancy agreement. Since the coming into operation of the 1950 Act (October 26, 1950), an allotment garden tenancy can be determined by notice to quit only when twelve months or longer notice is given, to expire on or before the 6th day of April or after the 29th day of September in any year. Alternatively, the local authority may determine the tenancy by re-entry on three months' notice, where there is power to do so in the tenancy agreement, if the land is required for building or industrial purposes, or if it is required for other purposes of the authority for which it was originally acquired or has since been appropriated. In any such case, the tenant will normally be entitled to compensation for crops growing upon the land in the ordinary course of cultivation of the land as an allotment garden, and for manure applied to the land, and also for disturbance to the extent of a sum equivalent to one year's rent (*see* Act of 1922, s. 2, and Act of 1950, ss. 2 and 3). Where the tenancy agreement so provides, an allotment garden tenancy may also be determined by the local authority by re-entry for non-payment of rent.

Different provisions apply to allotments *stricto sensu*, and if a particular allotment falls within the definition of an agricultural holding, it may be that the landlord would not be able to determine the tenancy without first obtaining the consent of the Minister of Agriculture and Fisheries to the enforcement of a notice to quit (*see Stevens* v. *Sedgman*, *supra*).

Where, on the termination of a tenancy of an allotment garden, the tenant quits the land, the local authority, as landlord, will be entitled to recover from the tenant compensation in respect of any deterioration of the land caused by the failure of the tenant to maintain it clean and in good state of cultivation and fertility (Act of 1950, s. 4). This is a new provision, but we feel that in practice, it will not often be worth the local authority's while to assess and collect such sums ; but the power may prove useful in some cases, as any such claim to compensation may be off-set against a claim for compensation for growing crops, manure or disturbance, made by the tenant (1950 Act, s. 5).

J.F.G.

GOATS AND MONKEYS

" Goats and monkeys ! " mutters Othello, as he glares upon Cassio and Desdemona, all unconscious of the brewing storm. Othello's mind has been poisoned by Iago's foul aspersions upon Desdemona's moral character, and the zoological reference is a concise summing-up of the outraged husband's feelings. For the two animals symbolize, respectively, lust and cunning—the elements of the adulterous intrigue of which he believes them guilty. The innuendo is doubly false ; Cassio and Desdemona, as everybody knows, are guiltless of the fault imputed to them ; and it is a matter of grave doubt whether the beasts to which Othello compares them really merit the evil reputation with which their names are associated.

So far as the monkey is concerned, the whole thing is merely a kind of guilt-complex. Long before Darwin told them the awful truth, human beings were always somewhat embarrassed in the presence of a creature which, as it were, holds up a distorting mirror before their eyes, and shows them to themselves in a caricature which is too lifelike for their comfort. Since the publication of *The Origin of Species* this embarrassment has become accentuated, as is not unnatural for any man when he discovers the existence, hitherto unsuspected, of a host of poor relations of uncertain respectability and doubtful antecedents. And so man endeavours, by the process known to psychologists as projection, to relieve himself of his feelings of guilt and shame for his own less admirable propensities by imputing them to his almost-human cousins. To the apes he attributes the cunning mischievousness of his own character ; he invents proverbs to justify his aspersions (So-and-So is " as artful as a waggon-load of monkeys ") ; he shuts them up in Zoological Gardens, and stands before their cages convulsed with malicious laughter at their all-too-human antics. The thoughtful observer may feel that cynical amusement is not confined to the outside of the bars, and that the gaping visitors are sometimes laughing (in the colloquial phrase) on the other side of their faces.

The lascivious tendencies imputed to the useful and agile goat are equally misplaced. They would seem to have originated in confused thinking on the part of early Christian theologians who had not received the benefit of a classical education. Among the Greeks the God Pan was originally the patron of shepherds ; shepherds are traditionally addicted to pastoral music and dancing, and to Pan they attributed the invention of the *syrinx*, or shepherd's-pipe, and the introduction of the dance. These associations with the herding of flocks led naturally to the representation of the nimble God as a being human in form, but endowed with horns, goat's feet and a tail, leading the dances of the wood-nymphs and satyrs, and striking those who beheld him at his revels with *panic* awe and terror.

When the new austere cult of Christianity penetrated the ancient world, it was in the cities that it first secured a foothold ; in the remote country districts the ancient worship of Pan persisted for centuries. The early Fathers of the Church, ascribing this rustic perversity to the influence of the Devil, gradually came to indentify Pan with His Satanic Majesty—hoofs, horns, tail and all. Dreadful stories were whispered of the Witches' Sabbaths, with their orgies celebrated on lonely heaths, attended by Satan himself in the form of a Black Goat with whom young virgins were mystically united to the accompaniment of obscene rites. Belief in a personal Devil is out of fashion today, but the poor goat still bears the brunt of his evil reputation, which has become proverbial through frequent literary allusion. Thus the braggart Pistol, in *King Henry V*, addresses his foppish French prisoner as " Thou luxurious mountain-goat ! " William Blake writes of " the lust of the goat ", and Elizabeth Barrett Browning refers to

> " The Great God Pan
> Down in the reeds by the river ;
> Spreading ruin and scattering ban
> Splashing and paddling with hoofs of a goat
> And breaking the golden lilies afloat."

This last picture of a goat-like creature delighting in wanton mischief, foreign as it would have been to Greek ideas, has recently been reflected in real life. From another primitive community, in Northern Rhodesia, comes the heart-rending story of Ishamacai, a frugal native who succeeded, over a period of several months, in accumulating coins to the value of £6. When his store became unwieldy, the news-item tells us, he changed his savings into six new £1 notes which he buried in a box in his hut. Finding his treasure wet and sodden after heavy rain, he spread the notes to dry in the sun outside the hut. Then came catastrophe ; " a neighbour's goat, passing the hut, stopped to investigate, and ate Ishamacai's savings." Swift retribution followed this outrage. Having failed to persuade his neighbour to make due restitution, Ishamacai killed the wretched author of his loss " and extracted from the stomach the masticated but undigested notes." The resulting cross-claims have presented the officials of the Native Affairs Department with a pretty juridical problem.

Another despatch, this time from Italy, provides an illustration of the proverb " Give a dog a bad name—and hang him," not in its literal sense, but in its application to our much-maligned relatives, the monkeys. " Warned by the Milan police, customs agents on the Italian-Swiss frontier are on the look-out for a consignment of large toy monkeys, consigned to a Swiss firm. The monkeys are known to be stuffed with mink pelts worth many thousands of pounds, stolen from a Milan store." Here, if proof were needed, is powerful evidence of the truth of what we have written above. Taking dastardly advantage of the bad character of the species, the thieves have had the effrontery to fasten upon—or rather within—the monkeys the responsibility for their own criminal acts. This is as impudent a " frame-up " as any we have ever heard of, and one that has already stirred fierce resentment among all self-respecting anthropoids. Drastic protest will be made against an unmerited slander upon a section of the population who have prided themselves for generations on preserving their community from contamination by the anti-social example of the human malefactors among whom they live.

A.L.P.

PERSONALIA

OBITUARY

We record with regret the death of Sir Leslie Bertram Gibson, formerly Chief Justice of Hong Kong at the age of fifty-six.

Sir Leslie, who was educated at King Henry VIII School, Coventry, had a distinguished career in the Colonial Legal Service. He first entered the Colonial Service in 1920 as a cadet in the Malayan Civil Service. He was called to the Bar by Gray's Inn in May, 1930.

Thereafter he turned his attention to the legal sphere and having filled a number of legal appointments including those of Solicitor-General Straits Settlements and Assistant Legal Adviser Malaya, he was transferred to the Colonial Legal Service in 1937 as Crown Counsel and Assistant Legal Adviser, Malaya. He was next appointed to be Attorney-General, Trinidad, in 1940 and then Attorney-General, Palestine, in 1944. He held the last position until the end of the British Mandate and during the illness of Viscount Gort in 1945 he was appointed officer administering the Palestine Government so was in charge in the troubled times which followed the War.

He received the honour of Knighthood in the Birthday honours List of 1948 and from 1948 to 1950 he was Chief Justice of Hong Kong.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Acquisition of Land (Authorization Procedure) Act, 1946—*Compulsory purchase of open space already let to purchasing authority.*

The council have made an order under s. 1 of the Acquisition of Land (Authorization Procedure) Act, 1946, authorizing them to purchase compulsorily for the purpose of being used as a public pleasure ground land of which they are in possession under a lease and which, as required by the lease, is being used as such. Section 1 (2) (*b*) of the Act applies the special provisions of Part III of sch. 1 to the purchase of land forming part of an open space, and "open space" for the purposes of the Act includes any land used for the purposes of public recreation (*vide* s. 8 (1)). The question has been raised whether the compulsory purchase is subject to special parliamentary procedure. It seems to me that in view of the power given to the appropriate Minister by sub-para. (1) of para. 11 of sch. 1 Parliament did not intend that such a purchase as this should be subject thereto. FEN.

Answer.

It may be that Parliament did not have in contemplation the purchase of the reversion upon a lease by which the land was already being used as an open space, but in our opinion such a purchase is within s. 1 (2) of the Act, and so the special provisions of Part III of sch. 1 apply.

2.—Guardianship of Infants—*Maintenance order—Whether means of both parties to be considered.*

I appeared for the mother on an application for maintenance of the child of the marriage under the Guardianship of Infants Acts and submitted at the hearing that the court was only entitled to take into consideration the income of the father in assessing the amount of maintenance which he should pay. No objection to my submission was made at the time, but the clerk to the court has since expressed his disagreement with my submission. My submission was based purely on the wording of s. 3 (2) of the Guardianship of Infants Act, 1925. I have been unable to find any authorities and should be glad to receive your views. S. TOGO.

Answer.

Although the subsection refers specifically to the means of the father we think it would be unreasonable to disregard the means of the mother in deciding upon the weekly amount to be paid under the order. A mother is liable to maintain her child; it is not the exclusive liability of its father.

3.—Highway—*Overhanging trees—Fouling by birds.*

A complaint has been made to the local authority that rooks continually nest in trees growing on land adjoining one of the highways of the county borough, and that (as many of the overhanging branches are above the highway) the clothing of pedestrians passing underneath and the highway itself are frequently fouled by excreta. The overhanging branches do not themselves cause obstruction of the highway or nuisance. Kindly let me have your opinion as to any powers that the council may exercise to remedy this grievance. PENT.

Answer.

The council has no powers at common law or under statute in relation to interference with the right of passage caused by the natural falling of the excreta, but it is under a duty to abate the nuisance caused by any accumulation of excreta on the way. The difficulty might well be met by an approach to the owner pointing out the disadvantages to the public, and inviting him to drive off the rooks and offer to defray his expenses, or the council could offer to drive off the rooks and with the permission of the owner enter on his land if it should be necessary.

4.—Housing Act, 1936, s. 9—*Repair of insanitary house—Owner purporting to abandon property.*

Your advice is requested on the question of whether there is any means whereby a landlord can avoid the provisions of s. 9 of the Housing Act, 1936. We are acting for two landlords, both of whom have cottage property, the annual liability for repairs of which exceeds the rent and further demands are being made by the sanitary inspector. We are aware of cases in this town in which the landlord has given notice to quit to the tenant and notice that he does not intend to collect any more rent, and that the tenant remains in the property at his own risk after expiry of the notice to quit. In these cases the local council have in fact taken no action to enforce s. 9, although it may be that the reason was because the landlord in question was not worth suing and, of course, the security of the property was valueless. It seems to us that the landlord remains the person "having control" of the premises as regards the council even if he seeks to abandon them in the manner suggested. FANA.

Answer.

Having regard to the definition in s. 9 (4) of the Act, we do not think that a landlord who leaves property in the former tenant's hands in the manner described ceases to be "the person having control of the house." The notice given to the tenant does not divest the freehold in favour of the tenant, and the owner is still the person who would receive the rack rent if the house were let at a rack rent. (Our opinion is supported by *Rawlence v. Croydon Corporation* [1952] 2 All E.R. 535, reported since the answer was sent to press.)

5.—Land Charges—*Town and Country Planning Act*, 1932, *s.* 6.

Is there any reason why entries in Part IIIa of the local land charges register relating to a resolution to prepare a planning scheme pursuant to s. 6 of the Town and Country Planning Act, 1932, should not now be cancelled? The scheme did not become operative. P. RUS.

Answer.

Yes. The entry may be material in relation to contraventions of previous planning control; *see* s. 75 (9) of the Town and Country Planning Act, 1947.

6.—Licensing—*Special removal—Applicable where existing licensed premises are to be "pulled down"—Whether premises to which licence removed must be adapted for purposes of public house.*

I shall be glad if you would give me your opinion on the following point:

A fully licensed house is about to be condemned and a demolition order served on the brewers who own the property. The order is being made in view of the state of repair and age of the property. The brewers propose purchasing an ordinary house nearby to convert it into a public house.

I have been informed that it is the brewers' intention to apply at a transfer session for a special removal of the licence from the house to be demolished, to the new house they propose to purchase.

(1) Is a demolition order served by the local authority, an order made for a "public purpose"?

(2) Can a special removal be granted to premises which have not yet been adapted as a public house, or must the house be adapted before the special removal is granted? NILE.

Answer.

(1) It seems doubtful, on the facts disclosed, whether the demolition order is for a "public purpose." But we do not think that this is relevant: it is sufficient for the purposes of s. 24 (2) (*a*) of the Licensing (Consolidation) Act, 1910, that the premises in respect of which the licence has been granted are about to be "pulled down."

(2) The sole test to be applied in relation to the premises to which the licence is sought to be removed is that "in the opinion of the licensing justices, they are fit and convenient premises for the purpose." It may be that without some adaptation they are not "fit and convenient" but that adaptation will make them so. The test must be applied as at the date on which application for special removal is made.

7.—Magistrates—*Jurisdiction and powers—Order to find surety to keep the peace or to be of good behaviour—Defendant's consent not required.*

Under the headings "Surety of the Peace," "Surety for Good Behaviour" and "Common Assault" in *Stone* it is stated in each case that the defendant may be ordered to enter into a recognizance and find sureties to keep the peace, etc. The court may then order the defendant, in default of compliance with the order, to be imprisoned for a period not exceeding, if the court be a petty sessional court, six months.

Does the power to *order* the defendant to enter into the recognizance mean that the court merely tells the defendant that he is bound in a certain sum, whether he is willing or not, or does he have to be asked if he is content to be bound? In other words does the expression "in default of compliance with the order" mean refusal by the defendant to be bound and to find sureties, or merely failure or refusal to find sureties, consent to his being bound being unnecessary? JOG.

Answer.

The defendant's consent is not required. If he fails to comply with the order he is liable to be imprisoned in default.

As to imprisonment in default *see* the Summary Jurisdiction Act, 1879, s. 25 and s. 34 (the latter applies only to orders made under

any future Act); and the Prevention of Crimes Act, 1871, s. 10 in cases to which that section applies.

8.—National Parks and Access to the Countryside Act, 1949, s. 42—*Diversion of public paths—Cost of order.*

By s. 42 of the National Parks and Access to the Countryside Act, 1949, a local authority is enabled to require an applicant for a diversion order to enter into an agreement with the authority to defray or to make such contribution as may be specified in the agreement towards certain compensation or expenses arising in connexion with the order. I shall be glad of your opinion as to whether the inclusion in the agreement of a clause requiring the applicant to defray the expenses of the authority in complying with the provisions of sch. I to the Act and of reg. 15 of the National Parks, etc., Regulations, 1950, as they relate to the making and confirmation of the order, the costs of advertising the order and so on, would be *ultra vires* the authority. It will be noted that no mention is made in the subsection of any such expenses (and as the order is required to be advertised in the *London Gazette*, they will not be inconsiderable) and it may be considered that there is therefore no statutory authority to require the applicant to meet these costs. PEKE.

Answer.

We agree. There is no power to require the applicant to meet the costs of the proceedings to make the order.

9.—Probation Order—*Fine in addition—How can matter be put right?*

A case of simple larceny was recently dealt with by my magistrates when the female defendant, who was not represented, elected to be dealt with summarily and pleaded Guilty. The court imposed a fine of £5 and also made a probation order for two years. On looking more closely into the Criminal Justice Act, 1948, after the court had risen it seems clear that the magistrates had no power to impose a fine and in addition make a probation order and this is borne out by the case of *R.* v. *Parry and Others* [1950] 2 All E.R. 1179. The magistrates who adjudicated would prefer the fine to stand, but the difficulty arises as to the proper course they should take to have the probation order rescinded as it is not anticipated that the defendant will take any steps by way of appeal. A copy of the order has not so far been served on her. Your opinion as to the proper course the court should take to set the matter right will be much appreciated. CHUM.

Answer.

R. v. *Parry*, *supra*, was an appeal from quarter sessions and turned upon the question whether s. 13 of the Criminal Justice Act, 1948, empowered the court to fine in addition to making a probation order on conviction on indictment. The same principle would apply, however, *a fortiori* in magistrates' courts, which could not have exercised such a power under s. 13 even if it had existed. The only way in which the matter can be set right at this stage is by appeal. If necessary, quarter sessions might extend the time for giving notice. In *R.* v. *Parry* the Court of Criminal Appeal set aside the probation order and left the fine standing, but quarter sessions might not take the same view in this case. If there is no appeal it would be unsafe to enforce either the fine or the probation order. Out of abundant caution it might be advisable to discharge the probation order at once. If this were done, there would probably be no harm in accepting payment of the fine if that is tendered.

10.—Public Health Act, 1936, ss. 24 and 39—*Public sewer on private premises—Renewal.*

An old sewer serving three premises is somewhere defective between the point of connexion with the public sewer and the drains of the three premises connected thereto. The defective sewer passes under the properties and the council propose to disconnect the existing house drains and lay an entirely new sewer from the point of connexion with the public sewer and along the side and rear of the properties required to be drained, and to seal up and abandon the old defective sewer. The defective sewer comes within s. 24 (4) (*b*).

Advice is sought:

(*a*) (i) Whether the new sewer proposed to be provided by the council is a renewal or improvement of the old defective sewer thus entitling the council to serve notice upon the owners concerned and to recover the expenses incurred.

(ii) Whether it is for the council to provide a surface water sewer for the disposal of sink waste, etc., which at present discharges into the old defective soil sewer.

(*b*) Whether notice under s. 39 of the Public Health Act, 1936, can be served upon the owners requiring the owners to make satisfactory provision for the drainage of the premises by renewing the house drains so as to connect to the new sewer. PIN.

Answer.

(*a*) (i) Yes, upon the view (which seems to us the better) that "renewal" includes, in this context, providing a new pipe as well as making an old pipe new by substituted lengths.

(ii) No. *See* s. 39 (2) of the Public Health Act, 1936, applying s. 37 (3) (4) of that Act and see the definition of drainage in s. 37 (1).

(*b*) Yes.

11.—Real Property—*Dangerous walls—Ownership of wall between properties.*

A portion of the dividing wall between properties has collapsed and become dangerous. The side of the wall containing the buttresses abuts on land used as a common drying ground and also by the children of the neighbourhood at play. The other side abuts on to a passage which gives access to the rear of other dwelling-houses and a store building. This passage was sewered and paved by the local authority many years ago but has not been adopted as a public highway. The public have access to this passage from the street. The owner of the land used as a common drying ground denies liability and ownership of the wall. Some doubt has been expressed whether the wall can be dealt with under s. 75 of the Towns Improvement Clauses Act, 1847, as it does not front or abut on to a public highway. Section 30 of the Public Health Acts Amendment Act, 1907, has been considered as also the cases *Cheshire Lines Committee* v. *Heaton Norris U.D.C.* [1913] 1 K.B. 325, and *Carshalton U.D.C.* v. *Burrage* [1911] 2 Ch. 133. I should be glad of your advice on the above-mentioned problem. PINC.

Answer.

The passage does not appear to be a highway adopted or unadopted, but a court or passage used in common by the occupiers of two or more houses. Public access to the passage seems to have reference only to the use of the passage by the public as invitees of the owners or occupiers of the property to which it gives access. Presumably it was paved by the council on default of the owners under s. 20 of the Public Health Act, 1925, now s. 56 of the Public Health Act, 1936. The liability of the owner of the wall is a liability to invitees. Ownership of the wall is purely speculative, on the facts given to us. A man cannot build buttresses on another's land, but the builder of the wall could have purchased a right to do so, or even have trespassed, acquiring in time a possessory title to the soil below the buttresses. It seems likely, therefore, that the ownership of the wall is vested in the owners of the property to which the passage gives access. If these owners are informed of their possible heavy liability for any injury to children, they may be stimulated into repairing the wall. Section 58 of the Public Health Act, 1936, may be considered in addition to the sections mentioned in the query, but, unless ownership can be settled, may be difficult to apply.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

WEST NORFOLK PROBATION AREA

Appointment of Whole-time Woman Probation Officer

THE West Norfolk Probation Area Committee invites applications for the appointment of a Woman Probation Officer, to be stationed at King's Lynn, whose services will be assigned to the Borough of King's Lynn and to several County Petty Sessional Divisions. The person appointed will not be required to provide a motor car for use in connexion with her duties but possession of a car will be an advantage. Mileage allowances in accordance with the Scheme of the National Joint Council for Local Authorities' A.P.T. and Clerical Services, will be payable if a car is provided by the selected candidate.

The appointment and salary will be in accordance with the Probation Rules, and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names and addresses of two persons to whom reference can be made, should be received by the undersigned not later than November 1, 1952.

H. OSWALD BROWN,
Secretary to the West Norfolk Probation Area Committee.

County Offices,
Thorpe Road, Norwich.

COUNTY BOROUGH OF SMETHWICK

Appointment of Male Assistant Clerk to the Justices

APPLICATIONS are invited for the above-named full-time appointment from only those applicants who have a sound knowledge and general experience of the work of a Justices' Clerk's Office, capable of performing all duties without supervision, including the taking of courts and acting entirely in the absence of the Justices, and taking of depositions by typewriter.

The salary payable will be within Grade Va of the A.P.T. Division of the National Scale of salaries (£625—£685) according to experience. The successful candidate will be required to pass a medical examination and to contribute to the superannuation fund.

Applications, marked "Assistant," stating age, marital condition, present and past appointments, with full particulars of experience, together with two recent testimonials, must be received by me not later than November 1, 1952.

T. CRADDOCK.

Law Courts,
Smethwick.

BOROUGH OF SURBITON

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor on the permanent staff of the Town Clerk's Department at a salary in accordance with Grade A.P.T./VIII (£760× £25—£835 per annum plus London "weighting"). Applicants must have had experience in conveyancing and advocacy, and previous local government experience is essential. Terms of appointment and forms of application may be obtained from the undersigned, to whom completed application forms should be submitted not later than November 5, 1952.

R. H. WRIGHT,
Town Clerk.

Council Offices,
Surbiton.

WHITSTABLE URBAN DISTRICT COUNCIL

Appointment of Deputy Clerk

APPLICATIONS are invited from Solicitors for the above appointment. Salary—Grade A.P.T. VIII. Housing accommodation available.

Stating age, qualifications and experience, and names of two referees, applications, marked "Deputy Clerk," should be sent to me. Closing date October 27. Usual conditions apply.

FREDERICK TOMLINSON,
Clerk of the Council.

The Castle,
Whitstable.
October 15, 1952.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

BOROUGH OF WATFORD
(Pop. 73,072)

Appointment of Town Clerk

APPLICATIONS are invited from solicitors or barristers, having wide experience in local government law and administration, for the appointment of Town Clerk.

The Borough Council have adopted the Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks and offer an annual salary of £1,800 rising to £2,050 by two increments of £100 each and one of £50.

Applications, giving full name, age, particulars of present and previous appointments, local government experience, together with the names of two persons to whom reference can be made, must be sent so as to be received by me not later than Monday, November 3. Forms of application will be supplied on request to me.

The successful candidate will be required to take up the appointment as soon as practicable after January 31 next, to pass a medical examination and to live in or adjacent to the Borough.

Canvassing in any form will be a disqualification.

A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.
October 15, 1952.

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